

**Thomas P. O'Brien III**

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January 30, 2013

**VIA HAND-DELIVERY**

Mr. Jeffrey R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

JAN 30 2013

PUBLIC SERVICE  
COMMISSION

Re: *In the Matter of: Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households, Case No. 2009-00100 – Quarterly Filing and Petition for Confidential Treatment*

Dear Mr. Derouen:

Enclosed, please find an original and ten copies of TracFone Wireless, Inc.'s Quarterly Report, covering the final three months of 2012, as required to be filed in the Commission's September 23, 2010 Final Order in the above-referenced case. Due to the confidential nature of the information included in this Quarterly Report, the ten copies are redacted and the original unredacted report is filed under seal. An original and ten copies of a Petition for Confidential Treatment relating to this Quarterly Report is also tendered for filing herewith.

Please file these documents in the record and return file-stamped copies to me.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,



Thomas P. O'Brien, III

TPOB/ljm  
Enclosures

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**JAN 30 2013**

**Kentucky  
Customer De-Enrollment Report thru Q4 2012  
REDACTED**

**PUBLIC SERVICE  
COMMISSION**

		Oct-12	Nov-12	Dec-12
1	Provide the number of customers who have been de-enrolled for not having activity in a 60 day period or longer.			
2	Provide the number of customers who did not pass the annual verification			
3	Provide the number of customers that were voluntarily de-enrolled.			

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE**  
**KENTUCKY PUBLIC SERVICE COMMISSION**

**RECEIVED**  
JAN 30 2013  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

PETITION OF TRACFONE WIRELESS, INC.     )  
FOR DESIGNATION AS AN ELIGIBLE     )  
TELECOMMUNICATIONS CARRIER IN THE     )     CASE NO. 2009-00100  
COMMONWEALTH OF KENTUCKY FOR THE     )  
LIMITED PURPOSE OF OFFERING LIFELINE     )  
AND LINK UP SERVICE TO QUALIFIED     )  
HOUSEHOLDS     )

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PETITION FOR CONFIDENTIAL TREATMENT OF  
PROPRIETARY AND COMMERCIALY SENSITIVE INFORMATION

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TracFone Wireless, Inc. (“TracFone”), pursuant to KRS 61.870 *et seq.*, 807 KAR 5:001, Section 7 and other applicable law, respectfully requests the Commission to grant confidentiality to, and protect from public disclosure, certain information provided in compliance with the Commission’s September 23, 2010 Order granting TracFone status as an eligible telecommunications carrier for the purpose of offering Lifeline and Link-Up Service to qualified low-income households in the Commonwealth of Kentucky. In support of said petition, TracFone states as follows:

1. The Commission’s September 23, 2010 Order requires TracFone to “submit a quarterly report to the Commission...showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, or voluntarily being deactivated.”

2. In compliance with the Commission's September 23, 2010 Order, TracFone is filing its quarterly report covering the final three months of 2012, or Fourth Quarter of the year. The report includes valuable commercial information, including the number of customers subscribing to TracFone's service who have been de-enrolled. The information is confidential and proprietary and, if openly disclosed, would permit an unfair commercial advantage to competitors of TracFone.

3. The Kentucky Open Records Act exempts from public disclosure certain information, including proprietary information and/or sensitive commercial information. Specifically, KRS 61.878(1)(c)(1) provides:

The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction...records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records....

The Kentucky Supreme Court has construed this exemption from disclosure to include information which is proprietary and not otherwise publicly available. See *Marina Management Service, Inc. v. Com. of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

4. The information contained in TracFone's report is required to be disclosed to the Commission by virtue of conditions imposed in the Commission's September 23, 2010 Order. The information is not publicly available and identifies the number of customers who have been de-enrolled from subscriptions to TracFone's service. The

confidential and proprietary nature of this information has been previously acknowledged by the Commission:

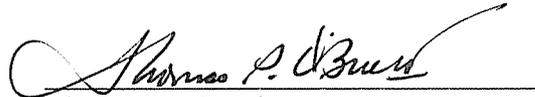
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Tracfone's competitors.<sup>1</sup>

The information contained in the report satisfies the Kentucky Open Records Act's requirements for exemption and therefore it should be afforded confidential status.

WHEREFORE, on the basis of the foregoing, TracFone respectfully requests that the Commission grant confidential treatment to, and protect from public disclosure, certain information filed herewith under seal as set forth herein.

This 30<sup>th</sup> day of January, 2013.

Respectfully submitted,



Thomas P. O'Brien, III  
Cory J. Skolnick  
Frost Brown Todd LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202  
(502) 589-5400 – Telephone  
(502) 581-1087 – Facsimile

*Counsel for TracFone Wireless, Inc.*

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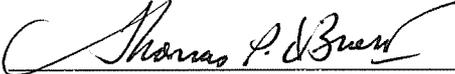
<sup>1</sup> Letter from Jeff Derouen to Stephen Athanson (Sept. 16, 2011). A copy of the letter is attached hereto as Exhibit A.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, addressed to the following on this 30<sup>th</sup> day of January, 2013:

Hon. Dennis Howard  
Office of the Attorney General  
Utility Intervention and Rate Division  
1024 Capital Center Drive  
Frankfort, Kentucky 40601

Mitchell F. Brecher  
GREENBERG TRAUIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037

  
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*Counsel for TracFone Wireless, Inc.*



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 616  
Frankfort, Kentucky 40602-0816  
Telephone: (502) 564-3949  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

September 16, 2011

Tracfone Wireless, Inc.  
Attention: Stephen Athanson  
9700 NW 11<sup>th</sup> Avenue  
Miami, Florida 33178

Re: Tracfone Wireless, Inc.  
Petition for Confidential Treatment received 7/29/11  
PSC Reference – Case No. 2009-00100

Dear Mr. Athanson:

The Public Service Commission has received your letter on July 29, 2011 wherein you have requested confidential protection on behalf of Tracfone Wireless, Inc. ("Tracfone") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as being contained in its Quarterly Activity Report for the 2<sup>nd</sup> Quarter of 2011. The information is described as the number of customers subscribing to service who have been de-enrolled.

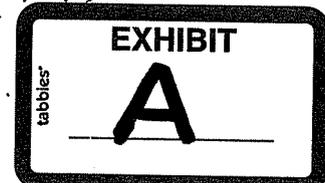
Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise Tracfone's competitive position in the industry, which would result in an unfair commercial advantage to Tracfone's competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Tracfone's competitors. Therefore, the information requested to be treated as confidential meets the criteria for confidential protection and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

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*Kentucky*  
UNBRIDLED SPIRIT

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Mr. Athanson  
September 16, 2011  
Page 2

If the information becomes publicly available or no longer warrants confidential treatment, Tracfone Wireless, Inc. ("Tracfone") is required by Section 8(9)(a) of 807-KAR-5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Darouen  
Executive Director

kg/

cc: Parties of Record